

ESTTA Tracking number: **ESTTA154863**Filing date: **08/03/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Going Postal! Business Center, LLC		
Entity	LLC	Citizenship	Idaho
Address	100 N. Whitley Dr. Fruitland, ID 83619 UNITED STATES		

Attorney information	Ken J. Pedersen Pedersen & Company, PLLC 1410 North 28th Street Boise, ID 83703 UNITED STATES ip@pedersenco.com Phone:(208) 343-6355
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Registration Subject to Cancellation

Registration No	3083574	Registration date	04/18/2006
Registrant	GOIN' POSTAL FRANCHISE CORPORATION 4941 4TH STREET ZEPHYRHILLS, FL 33542 UNITED STATES		

Goods/Services Subject to Cancellation

Class 039. First Use: 2004/09/20 First Use In Commerce: 2004/09/20

All goods and services in the class are cancelled, namely: transportation services, namely arranging and managing shipping and delivery of goods and parcels for others by air, rail, boat and motor vehicle; packing of goods for transport by air, rail, boat and motor vehicle

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Related Proceedings	CV 07-137-S-BLW in the Federal District of Idaho
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	GOING POSTAL!		
Goods/Services	postal and package delivery services, as well as printing and document duplicating services.		

U.S. Registration No.	2545114	Application Date	04/18/2001
Registration Date	03/05/2002	Foreign Priority Date	NONE
Word Mark	GOPOSTAL MAIL & BOX CENTERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 039. First use: First Use: 2000/07/14 First Use In Commerce: 2000/07/14 Transportation of goods for others by air, rail and/or sea		

U.S. Registration No.	3064250	Application Date	04/15/2003
Registration Date	02/28/2006	Foreign Priority Date	NONE
Word Mark	WE GO POSTAL...SO YOU DON'T HAVE TO!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 039. First use: First Use: 2004/05/00 First Use In Commerce: 2004/05/00 Postal services, namely, parcel delivery, packaging articles for transportation, and rental of mailboxes		

Attachments	78059076#TMSN.gif (1 page)(bytes) Petition to Cancel.pdf (4 pages)(139795 bytes) Exhibit A.pdf (2 pages)(91950 bytes) Exhibit B.pdf (2 pages)(49027 bytes) Exhibit C.pdf (3 pages)(118597 bytes)
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Signature	/Ken J. Pedersen/
Name	Ken J. Pedersen
Date	08/03/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GOING POSTAL! BUSINESS)	
CENTER, LLC,)	
)	
Petitioner)	Petition to Cancel
v.)	
GOIN' POSTAL FRANCHISE)	Registration No.
CORPORATION)	3,083,574
)	
Registrant)	

PETITION TO CANCEL REGISTRATION

GOING POSTAL! BUSINESS CENTER, LLC, an Idaho limited liability company with an office at 100 N. Whitley Dr., Fruitland, Idaho 83619, believes it will be damaged by continued registration of the mark GOIN' POSTAL, Your Friendly Neighborhood Shipping Center (and design), which mark is the subject of U.S. Trademark Registration No. 3,083,574, currently owned by Goin' Postal Franchise Corporation of Zephyrhills, Florida. The mark was registered in the Official Gazette of April 18, 2006.

The grounds for cancellation are as follows:

- 1) Registrant has registered the mark GOIN' POSTAL, Your Friendly Neighborhood Shipping Center (and design) as a trademark for transportation services, namely arranging and managing shipping and delivery of goods and parcels for others by air, rail, boat and motor vehicle (in international class 39).
- 2) The related application for the subject Registration was filed on February 23, 2004 based upon an alleged first use in Commerce of October 1, 2002. In an amendment, filed October 20, 2004, to an Office Action, the applicant's attorney amended the drawing for

the mark, the class of services for the mark, and the basis of filing (from use-based to “intent to use”-based) for the mark. In a statement of use filed January 12, 2006, applicant stated the first use of the mark was September 20, 2004. However, in an amended complaint (Docket #22 - pertinent page copies attached as Exhibit A herein) filed June 27, 2007 in Case No. CV 07-137-S-BLW in the Federal District of Idaho, Applicant, in allegation #8, states that the first use was “since at least 2002”. Therefore, the date of first use of Applicant’s mark is not clear, and Applicant had made inconsistent statements about it.

- 3) In about November 2003, Petitioner adopted the mark and name GOING POSTAL!, and, since about February 23, 2004, Petitioner has used said mark and name in interstate commerce, continuously and extensively in connection with a retail store in Fruitland, Idaho that provides postal and package delivery services, as well as printing and document duplicating services.
- 4) Before Petitioner adopted the mark and name GOING POSTAL!, it searched the Internet and found no presence of Applicant’s subject mark. Therefore, Petitioner adopted the mark GOING POSTAL! without any actual knowledge of Applicant’s mark.
- 5) Through extensive advertising, promotion, and use of the mark and name GOING POSTAL!, Petitioner has built a strong regional reputation for postal, package, printing and document duplicating services which extends eastwardly from Fruitland, Idaho to Boise, Idaho, and beyond, and, which extends westwardly from Fruitland, Idaho to Ontario, Oregon, and beyond.
- 6) The services set forth in the subject Registration No. 3,083,574 are closely related to services in connection with which Petitioner, and several third parties, have used before and are now using marks similar to Registrant’s mark GOIN’ POSTAL, Your Friendly Neighborhood Shipping Center (and design), and, on information and belief, Registrant’s services are offered to the same general class of customers who purchase the services in connection with which Petitioner, and the several third parties, have used and are using their own similar marks.

- 7) The registered mark substantially incorporates Petitioner's mark GOING POSTAL! and substantially incorporates the third party marks, namely "GO POSTAL MAIL & BOX CENTERS" (U.S. Trademark Registration No. 2,545,114) and "WE GO POSTAL...SO YOU DON'T HAVE TO!" (U.S. Trademark Registration No. 3,064,250). Copies of U.S. Trademark records relating to these third party registrations are attached as Exhibits B and C, respectively.
- 8) The services identified in Registration No. 3,083,574 are sufficiently related to the services in connection with which Petitioner, and the several third parties, have used and are using their GOING POSTAL! and related marks that, if Registrant's mark is continued to be used in connection with its services, it would be likely to cause confusion, mistake or deception of the relevant trade and public. Customers and potential customers of Petitioner and the several third parties are likely to believe that Registrant's services offered under the mark GOIN' POSTAL, Your Friendly Neighborhood Shipping Center (and design), emanate from, or are licensed or approved by, Petitioner and/or the several third parties, when that is not the case. Such confusion would be a source of damage to Petitioner, and to the several third parties.
- 9) If Registrant's registration is allowed to be maintained, it would thereby obtain a *prima facie* exclusive right to use of the GOIN' POSTAL, Your Friendly Neighborhood Shipping Center (and design), mark, which would be a further source of damage to Petitioner, and to the several third parties.

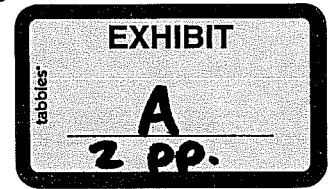
Wherefore, Petitioner believes that it will be damaged by continued registration of said mark, and prays that this Petition to Cancel be sustained, and that Registration No. 3,083,574 be canceled.

GOING POSTAL! BUSINESS CENTER, LLC

A handwritten signature in black ink, appearing to read 'Ken J. Pedersen', is written over a horizontal line.

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Date: 7/26/07



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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

GOIN' POSTAL FRANCHISE,)	
CORPORATION, a Florida Corporation,)	
)	Case No.: CV 07-137-S-BLW
Plaintiff,)	
)	
v.)	AMENDED COMPLAINT AND
)	DEMAND FOR JURY TRIAL,
)	INJUNCTIVE RELIEF REQUESTED
GOING POSTAL! BUSINESS CENTER,)	
LLC, an Idaho limited liability company,)	
)	
Defendant.)	
)	

**AMENDED COMPLAINT FOR TRADEMARK INFRINGEMENT AND UNFAIR
COMPETITION, JURY TRIAL AND INJUNCTIVE RELIEF REQUESTED**

Plaintiff, GOIN' POSTAL FRANCHISE CORPORATION, a Florida corporation, by and through its undersigned attorneys, hereby sues Defendant, GOING POSTAL! BUSINESS CENTER, LLC, a foreign limited liability company ("Defendant"), and states:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a Florida corporation with offices at 4941 4th Street, Zephyrhills, Florida 33542. Plaintiff does business throughout the United States.

2. Defendant is an Idaho limited liability company that is located in Fruitland, Idaho.

3. As shown in the Idaho Secretary of State official records, Defendant is a limited liability company registered February 26, 2004, with its principal place of business located at 315 N. Pennsylvania Avenue, Fruitland, Idaho 83619. A true and correct copy of the State of Idaho Secretary of State official records is attached hereto as Exhibit "1".

4. This action is brought by Plaintiff seeking damages and injunctive relief for Defendant's willful infringement of Plaintiff's registered mark in violation of 15 U.S.C. § 1114 and unfair competition in violation of 15 U.S.C. § 1125(a)(1).

5. Defendant has been engaged in infringing sales or infringing offers for sale in interstate commerce. Jurisdiction of this Court over this matter is founded under 15 U.S.C. § 1121.

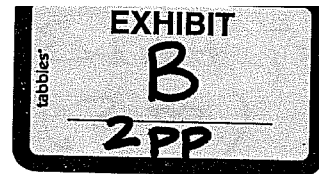
6. Venue properly lies in this judicial district under 28 U.S.C. § 1391(b)(2).

STATEMENT OF FACTS

7. GOIN' POSTAL, INC. is affiliated with the Plaintiff GOIN' POSTAL FRANCHISE CORPORATION and has its principal place of business at 38439 5th Avenue, Zephyrhills, Florida 33542.

8. GOIN' POSTAL, INC. has utilized the trade name "Goin' Postal" and a logo associated with said trade name wherein "Your Friendly Neighborhood Shipping Center" is part of the logo and is disclaimed and "Goin' Postal" without the logo (hereinafter "the Marks") since at least 2002.

9. GOIN' POSTAL, INC. filed an application to register the "Goin' Postal" trademark with the logo (hereinafter "the design mark") with the U.S. Patent & Trademark Office on February 23, 2004, and the design mark was registered on April 18, 2006, Registration No. 3083574. Attached as Exhibit "2".



Print: Sep 18, 2006

78059076

DESIGN MARK

Serial Number

78059076

Status

REGISTERED

Word Mark

GOPOSTAL MAIL & BOX CENTERS

Standard Character Mark

No

Registration Number

2545114

Date Registered

2002/03/05

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Gorman, Terrie, L INDIVIDUAL UNITED STATES 620 Camino De Los Mares E
San Clemente CALIFORNIA 92673

Goods/Services

Class Status -- ACTIVE. IC 039. US 100 105. G & S: Transportation
of goods for others by air, rail and/or sea. First Use: 2000/07/14.
First Use In Commerce: 2000/07/14.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MAIL & BOX CENTERS"
APART FROM THE MARK AS SHOWN.

Filing Date

2001/04/18

Examining Attorney

LORENZO, ROBERT



Thank you for your request. Here are the latest results from the



This page was generated by the TARR system on 2007-07-12 17:11:04 ET

Serial Number: 78237995 [Assignment Information](#)

Registration Number: 3064250

Mark (words only): WE GO POSTAL...SO YOU DON'T HAVE TO!

Standard Character claim: No

Current Status: Registered.

Date of Status: 2006-02-28

Filing Date: 2003-04-15

Transformed into a National Application: No

Registration Date: 2006-02-28

Register: Principal

Law Office Assigned: LAW OFFICE 116

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-01-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Steele, Tiffany L.

Address:

Steele, Tiffany L.
18900 Carrot St
Spring, TX 77379
United States

Legal Entity Type: Individual

Country of Citizenship: United States

Phone Number: 281-374-0400

Fax Number: 281-251-1113

GOODS AND/OR SERVICES

International Class: 039

Class Status: Active

Postal services, namely, parcel delivery, packaging articles for transportation, and rental of mailboxes

Basis: 1(a)**First Use Date:** 2004-05-00**First Use in Commerce Date:** 2004-05-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-02-28 - Registered - Principal Register

2006-01-17 - Law Office Registration Review Completed

2006-01-13 - Assigned To LIE

2006-01-11 - Allowed for Registration - Principal Register (SOU accepted)

2005-12-13 - Amendment From Applicant Entered

2005-11-22 - Communication received from applicant

2005-11-22 - PAPER RECEIVED

2005-10-11 - NON-FINAL ACTION E-MAILED

2005-10-11 - SU - Non-Final Action - Written

2005-07-26 - Statement of use processing complete

2005-05-18 - Amendment to Use filed

2005-01-18 - Extension 1 granted

2004-11-18 - Extension 1 filed

2005-08-01 - Attorney Revoked And/Or Appointed

2005-08-01 - TEAS Revoke/Appoint Attorney Received

2005-07-26 - Petition To Revive-Granted

2004-12-21 - Petition To Revive-Received

2005-05-09 - Abandonment Notice Mailed - No Use Statement Filed

2005-05-09 - Abandonment - No use statement filed

2004-12-21 - Late filed statement of use
2004-12-21 - TEAS Statement of Use Received
2004-05-18 - Notice of allowance - mailed
2004-02-24 - Published for opposition
2004-02-04 - Notice of publication
2003-12-17 - Approved for Pub - Principal Register (Initial exam)
2003-11-17 - Communication received from applicant
2003-11-17 - PAPER RECEIVED
2003-10-10 - Non-final action e-mailed
2003-09-26 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

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18900 Carrot St
Spring TX 77379
Phone Number: 281-374-0400
Fax Number: 281-251-1113
